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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY RAMEY,

Defendant and Appellant.

F066602

(Super. Ct. No. F94522745)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Deanna Lamb, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Franson, J.

Appellant Johnney Ramey appeals following the trial court's denial of his motion pursuant to Penal Code section 1170.126¹ to modify his three strikes sentence. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we affirm.

FACTUAL AND PROCEDURAL HISTORY

In 1977, and again in 1979, Ramey was convicted of second degree robbery.

In 1995, a jury convicted Ramey of two counts of second degree robbery and found true a personal use of a knife enhancement (§ 12022, subd. (b)) in each count and possession of drug paraphernalia (Health & Saf. Code, § 11364), a misdemeanor. In a separate proceeding, the court found true three serious felony enhancements (§ 667, subd. (a)) and allegations that Ramey had three convictions within the meaning of the three strikes law.

On June 6, 1995, the court sentenced Ramey to an aggregate, indeterminate sentence of 34 years four months to life.

On July 29, 1998, Ramey was resentenced because of an error by the court when it originally sentenced him. At the resentencing, the court stayed the punishment on one arming enhancement and sentenced Ramey to an aggregate, indeterminate sentence of 66 years to life; 25 years to life on one robbery conviction, 25 years to life on the second robbery conviction, a one-year arming enhancement, and three five-year serious felony enhancements.

On December 6, 2012, Ramey filed a motion to recall his sentence pursuant to section 1170.126 (Reform Act).

On January 3, 2013, the trial court denied Ramey's motion. In so doing, the court found that Ramey did not qualify for resentencing because his most recent offenses of

¹ All further statutory references are to the Penal Code unless otherwise indicated.

second degree robbery were serious and violent felonies and Ramey used a deadly or dangerous weapon, i.e., a knife, to commit the robberies (§ 1170.126, subd. (e)(1) & (2)).

On January 28, 2013, Ramey filed his appeal in this matter.

Ramey's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) However, in a document filed September 9, 2013, Ramey raises several contentions attacking the use of his 1977 and 1979 robbery convictions as strike convictions and attacking his 66-years-to-life sentence imposed for his 1998 robbery convictions. For example, he appears to contend that the use of his 1977 and 1979 convictions as strike convictions violated his plea agreement involving the older robbery convictions because the agreement provided that in the future each conviction could be used only to impose an enhancement of five years. Ramey also contends his defense counsel provided ineffective representation when Ramey entered his plea in the 1979 robbery because counsel informed him only that he could serve an additional one to five years for the conviction. Ramey further contends that section 654 limits the use of his 1977 and 1979 robbery convictions to one enhancement, and correcting it would assure that he receives the equal protection of the law. We summarily reject these contentions as irrelevant because they do not address the only issue in this appeal: whether the trial court erred in determining that he was ineligible for resentencing under the Reform Act.

Further, following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.²

² The appealability of the denial of a section 1170.126 petition is currently being considered by the Supreme Court. (See, e.g., *Teal v. Superior Court* (2013) 217 Cal.App.4th 308, review granted July 31, 2013, S211708 [court held denial of section 1170.126 petition was not appealable]; *People v. Hurtado* (2013) 216 Cal.App.4th 941, review granted July 31, 2013, S212017 [court held denial of § 1170.126 petition appealable].) Even if we were to conclude defendant had appealed from a nonappealable order, we would, in the interest of judicial economy and because of uncertainty in the

DISPOSITION

The judgment is affirmed. Ramey's September 12, 2013 request for judicial notice of several code sections and documents is denied.

law, treat Ramey's appeal as a petition for writ of habeas corpus or petition for writ of mandate (see *People v. Segura* (2008) 44 Cal.4th 921, 928, fn. 4; *Drum v. Superior Court* (2006) 139 Cal.App.4th 845, 852–853) and deny it on the merits for the same reasons discussed above.